

# Exhibit H

***State of California ex rel. Ven-A-Care of the Florida Keys, Inc.***  
***v. Abbott Laboratories, Inc., et al.,*** Master Civil Action No. 01-12257-PBS,  
**Subcategory Case No. 06-11337**

Exhibit to the December 21, 2009 Declaration of Christopher C. Palermo in Support  
of Defendants Mylan Inc. and Mylan Pharmaceuticals Inc.'s. Opposition to Plaintiffs' Motion for Partial Summary  
Judgment

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF MASSACHUSETTS

THE COMMONWEALTH OF MASSACHUSETTS,	)	
Plaintiff,	)	C.A. NO.
v.	)	03-11865-PBS
MYLAN LABORATORIES, INC., BARR	)	
LABORATORIES, INC., DURAMED	)	
PHARMACEUTICALS, INC., IVAX CORPORATION,	)	
WARRICK PHARMACEUTICALS CORPORATION,	)	
WATSON PHARMACEUTICALS, INC., SCHEIN	)	
PHARMACEUTICAL, INC., TEVA	)	
PHARMACEUTICALS USA, INC., PAR	)	
PHARMACEUTICAL, INC.,	)	
PUREPAC PHARMACEUTICAL CO.,	)	
AND ROXANE LABORATORIES, INC.	)	
Defendants.	)	

---

VIDEOTAPED DEPOSITION OF

ROBERT G. CUNARD

October 26, 2007

9:21 a.m.

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 2		Page 4	
1	1180 West Peachtree Street	1	CONTENTS
2	Atlanta, Georgia	2	EXAMINATION BY PAGE
3	Kendra B. James, B-2194	3	MR. MULLIN 8, 300
4		4	MR. ESCOBAR 271, 323
5		5	
6	APPEARANCES OF COUNSEL:	6	
7		7	INDEX TO EXHIBITS
8	For Plaintiff:	8	NUMBER DESCRIPTION PAGE
9	PETER A. MULLIN, ESQ.	9	Exhibit Cunard 001 Section 4C Attachment 97
10	ROBERT C. MOLVAR, ESQ.	10	Exhibit Cunard 002 11/8/01 E-mail from Dan King
11	The Commonwealth of Massachusetts	11	to Bob Potter Regarding Weekly
12	Office of the Attorney General	12	Update, Ending 11/2/01 103
13	1 Ashburton Place	13	Exhibit Cunard 003 New Product Plan Summary 112
14	Boston, Massachusetts 02108	14	Exhibit Cunard 004 6/28/00 E-mail from Jodi
15	617-727-2200	15	Eichelberger to Robert Cunard
16	617-727-2008	16	Regarding Drug 7 Spread 130
17	robert.molvar@ago.state.ma.us	17	Exhibit Cunard 005 4/5/01 E-mail to Bob Potter
18		18	From Jack Walsh Regarding
19		19	Drug 2 138
20		20	Exhibit Cunard 006 3/15/01 E-mail from Dan King
21		21	to Bob Potter and Robert
22		22	Cunard Regarding PCS 146
Page 3		Page 5	
1	APPEARANCES OF COUNSEL:	1	INDEX TO EXHIBITS
2		2	NUMBER DESCRIPTION PAGE
3	For Defendant:	3	Exhibit Cunard 007 3/10/00 E-mail from Bob Potter
4	WILLIAM A. ESCOBAR, ESQ.	4	Regarding Drug VII 153
5	Kelley Drye & Warren LLP	5	Exhibit Cunard 008 AWP Price Changes 173
6	101 Park Avenue	6	Exhibit Cunard 009 11/13/00 Letter to Generic
7	New York, New York 10178	7	Contract Vendor Regarding
8	212-808-7771	8	Market Competitive Prices 185
9	212-808-7897	9	Exhibit Cunard 010 4/15/03 E-mail from Tony
10	wescobar@kelleydrye.com	10	Mauro to Anthony Thomassey
11		11	Regarding Cyclobenzaprine 195
12	Also Present:	12	Exhibit Cunard 011 4/27/00 E-mail from Jason
13	Mr. Brian Cuthbertson, Associate Litigation Counsel	13	Harper to Steve Krinke
14		14	Regarding Reimbursements 202
15		15	Exhibit Cunard 012 4/24/00 E-mail from Robert
16		16	Cunard to Mr. Moldin
17		17	Regarding Drug 7 Info 212
18		18	Exhibit Cunard 013 Medicaid Reimbursement
19		19	Comparison Worksheet 219
20		20	Exhibit Cunard 014 Product Planning Backup
21		21	Information 7/24/00 --
22		22	Enalapril 231

2 (Pages 2 to 5)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 6	Page 8
<p>1 INDEX TO EXHIBITS</p> <p>2 NUMBER DESCRIPTION PAGE</p> <p>3 Exhibit Cunard 015 8/28/01 E-mail from Dennis</p> <p>4 Bonnstetter to Robert</p> <p>5 Cunard Regarding Competitor's</p> <p>6 Catalogs 236</p> <p>7 Exhibit Cunard 016 10/10/00 Letter to Laura</p> <p>8 Schneider from Bob Cunard 237</p> <p>9 Exhibit Cunard 017 11/6/00 Letter to Steve</p> <p>10 LaFrance from Bob Cunard 243</p> <p>11 Exhibit Cunard 018 7/31/00 E-mail from Dan King</p> <p>12 to bbsprad@wal-mart.com</p> <p>13 Regarding New AWPS 246</p> <p>14 Exhibit Cunard 019 8/31/01 E-mail From Mike Hatch</p> <p>15 to Robert Cunard Regarding</p> <p>16 Anthem Pricing - Drug 2 30 mg 253</p> <p>17 Exhibit Cunard 020 4/8/01 E-mail from Robert</p> <p>18 Cunard to Joe Duda Regarding</p> <p>19 Request for AWP/WAC Info 259</p> <p>20 Exhibit Cunard 021 Table of Contents 266</p> <p>21</p> <p>22</p>	<p>1 MR. CUTHBERTSON: Brian Cuthbertson, Mylan.</p> <p>2 THE VIDEOGRAPHER: Would the court reporter</p> <p>3 please swear the witness.</p> <p>4 ROBERT G. CUNARD,</p> <p>5 having been first duly sworn,</p> <p>6 was examined and testified as follows:</p> <p>7 EXAMINATION</p> <p>8 BY MR. MULLIN:</p> <p>9 Q. Good morning, sir.</p> <p>10 A. Good morning.</p> <p>11 Q. Could you tell us your full name, please.</p> <p>12 A. Robert George Cunard.</p> <p>13 Q. And, Mr. Cunard, what's your residence</p> <p>14 address.</p> <p>15 A. 3560 Berkshire Eve Court, Duluth, Georgia.</p> <p>16 Q. And the ZIP Code?</p> <p>17 A. 30097.</p> <p>18 Q. Mr. Cunard, I think as you know, my name</p> <p>19 is Peter Mullin. This is Robert Molvar. We're</p> <p>20 assistant attorney generals with the Commonwealth</p> <p>21 of Massachusetts.</p> <p>22 Are you aware that the Commonwealth of</p>
Page 7	Page 9
<p>1 THE VIDEOGRAPHER: Good morning, ladies and</p> <p>2 gentlemen. It's Friday, October 26th, 2007. It's</p> <p>3 9:21 a.m. We're in Atlanta, Georgia. This will be</p> <p>4 the deposition of Robert G. Cunard.</p> <p>5 The case is the Commonwealth of Massachusetts</p> <p>6 plaintiffs versus Mylan Laboratories, Inc., Barr</p> <p>7 Laboratories, Inc., Duramed Pharmaceuticals, Inc.,</p> <p>8 IVAX Corporation, Warrick Pharmaceuticals</p> <p>9 Corporation, Watson Pharmaceuticals, Inc., Schein</p> <p>10 Pharmaceuticals, Inc., TEVA Pharmaceuticals USA,</p> <p>11 Inc., Par Pharmaceutical, Inc., Purepac</p> <p>12 Pharmaceutical Company, and Roxane Laboratories,</p> <p>13 Inc. defendants, United States District Court,</p> <p>14 District of Massachusetts, Civil Action Number</p> <p>15 03-11865-PBS.</p> <p>16 Would the attorneys please introduce</p> <p>17 themselves.</p> <p>18 MR. MULLIN: Good morning. Peter Mullin and</p> <p>19 Robert Molvar, assistant attorney generals (sic)</p> <p>20 for the Commonwealth of Massachusetts.</p> <p>21 MR. ESCOBAR: William Escobar, Kelley, Dry &amp;</p> <p>22 Warren on behalf of Mylan and the witness.</p>	<p>1 Massachusetts has sued Mylan Laboratories and some</p> <p>2 other generic drug manufacturers in connection with</p> <p>3 price reporting?</p> <p>4 A. Yes.</p> <p>5 Q. And are you aware that this deposition is</p> <p>6 being taken in that case?</p> <p>7 A. Yes.</p> <p>8 Q. As you can see, we have a videographer and</p> <p>9 we're making a videotape of the testimony today and</p> <p>10 we have a court reporter and the reporter will</p> <p>11 prepare a transcript of the testimony that's given.</p> <p>12 And some or all of this deposition may be played to</p> <p>13 a jury in Boston in connection with the trial of</p> <p>14 the case.</p> <p>15 You've sworn an oath to tell the whole truth</p> <p>16 today. Do you understand that you're required to</p> <p>17 testify to the full extent of your recollection</p> <p>18 relating to any of the events that we ask you about</p> <p>19 today?</p> <p>20 MR. ESCOBAR: Objection to the form.</p> <p>21 You can answer.</p> <p>22 Q. (By Mr. Mullin) Do you understand --</p>

3 (Pages 6 to 9)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 62	Page 64
<p>1 the prices that Mylan reported to the price 2 reporting services was AWP? 3 A. Yes. As I recall, that was one of the 4 elements in the data file. 5 Q. And did Mylan also report WAC prices, 6 W-A-C? 7 A. Yes, I believe so. 8 Q. And is that true for the period when you 9 joined the company at least through September of 10 2003? 11 A. Yes. 12 Q. Were there any other prices that Mylan 13 customarily or usually reported to price reporting 14 services during the period from when you joined the 15 company up through September of 2003? 16 MR. ESCOBAR: Objection to the form. 17 THE WITNESS: Would you please read that back? 18 (Whereupon, the record was read by the 19 reporter.) 20 THE WITNESS: Not that I recall, no. 21 Q. (By Mr. Mullin) Would you describe your 22 role with regard to the establishment of Mylan's</p>	<p>1 involved in the creation. In other cases, I would 2 have just approved what others had put together. 3 Q. (By Mr. Mullin) And did you have at least 4 in some instances final approval authority during 5 that time period? 6 MR. ESCOBAR: Objection to the form. 7 THE WITNESS: Yes. 8 Q. (By Mr. Mullin) What was the practice at 9 Mylan with regard to the establishment of its AWP 10 during the time period from when you joined up 11 through September of 2003? 12 MR. ESCOBAR: Objection to the form. 13 THE WITNESS: As indicated around pricing, it 14 all varies product to product. But at the time of 15 introduction, an -- a proposed AWP would be 16 established based on the reference listed drug AWP. 17 Q. (By Mr. Mullin) I'm sorry. I didn't hear 18 the last part of your answer. 19 THE WITNESS: Would you read it back, please. 20 (Whereupon, the record was read by the 21 reporter.) 22 Q. (By Mr. Mullin) When you say "the</p>
Page 63	Page 65
<p>1 AWP prices during the time period from August '89 2 through September of 2003. 3 MR. ESCOBAR: You mean August '99? 4 MR. MULLIN: I'm sorry. August of '99, yes. 5 Q. (By Mr. Mullin) When -- when you joined 6 the company up through September of 2003. 7 MR. ESCOBAR: Objection to the form. 8 THE WITNESS: Could you be more specific what 9 you're looking for. 10 Q. (By Mr. Mullin) What role, if any, you 11 played in deciding what the company's AWP was going 12 to be on its products. 13 A. During the time period outlined, it -- my 14 role varied product to product, but I had oversight 15 and -- and -- and visibility into the price 16 setting. 17 Q. Are you the primary person to recommend, 18 are you a decision-maker? Describe your role for 19 us. 20 MR. ESCOBAR: Objection to the form. 21 THE WITNESS: As stated, it varied product to 22 product. In some cases, I would be actively</p>	<p>1 reference listed drug," what are you referring to? 2 A. That is the brand drug for which the ANDA 3 or abbreviated drug application references to be 4 about the bioequivalent and the therapeutic 5 equivalent to. 6 Q. And what was the -- the policy or the 7 guideline at Mylan in the period when you joined 8 the company up through September of 2003 with 9 regard to the relationship of the brand drug AWP 10 and the price that was established at Mylan for its 11 product? 12 MR. ESCOBAR: Objection to the form; no 13 foundation. 14 THE WITNESS: As indicated, it was a function 15 of the brand price of what our proposed AWP would 16 be. Typical proposed pricing would be 89 percent of 17 the reference listed drug AWP. 18 Q. (By Mr. Mullin) When you say the 19 "proposed AWP," what are you referring to? 20 A. The -- the proposed AWP that we would come 21 up with for submission to the third-party 22 databases.</p>

17 (Pages 62 to 65)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 90	Page 92
<p>1 MR. ESCOBAR: Objection to the form and asked 2 and answered. 3 THE WITNESS: WAC as well as all the pricing 4 came through my area of pricing and contracts. So 5 as supervisor of that area, it was under my 6 responsibility. 7 Q. (By Mr. Mullin) Do you know a fellow by 8 the name of Dan King? 9 A. Yes. 10 Q. Who is Dan King? 11 A. Actually, I know two Dan Kings. I believe 12 the one you're referring to is a national account 13 manager for Mylan. 14 Q. And he was there when you were there? 15 A. Yes. 16 Q. All right. Did he predate you? 17 A. Yes. 18 Q. And was he there when you left? 19 A. Yes. 20 Q. And is he still there now? 21 A. I don't know. 22 Q. What were Mr. King's responsibilities</p>	<p>1 A. For independent wholesalers. 2 Q. Going back for a second to -- to WAC, 3 during the period August '89 through September of 4 2003, was there any rule of thumb or -- with regard 5 to setting what the WAC was at Mylan? 6 MR. CUTHBERTSON: He said it again. 7 MR. ESCOBAR: We're going to have a standing 8 agreement that when you say '89 you mean '99, 9 right? 10 MR. MULLIN: Let -- let me see if I can 11 correct it. Okay. 12 MR. ESCOBAR: Well, I'll give you the standing 13 -- 14 Q. (By Mr. Mullin) Focusing -- 15 MR. ESCOBAR: -- agreement. 16 Q. (By Mr. Mullin) -- focusing on the time 17 period August '99 through September 2003, was there 18 any practice or policy at Mylan with regard to the 19 establishment of the WAC price? 20 MR. ESCOBAR: Objection to the form and asked 21 and answered. I think you asked it, Mr. Mullin, 22 the exact question a little while ago.</p>
Page 91	Page 93
<p>1 while you were at Mylan? 2 A. As I knew it -- and once again, Mr. King 3 didn't report to me, he was on the sales side. But 4 he had national account responsibility as a 5 salesperson. 6 Q. Territory base, particular customer base; 7 what was the scope of his responsibilities? 8 A. It was my understanding that those were 9 all done customer based. They were not aligned 10 geographically. 11 Q. And who are his customers? 12 A. I -- I won't recall the exact list. I 13 know one of his customers was Albertson's. I 14 believe another one was the Opti-Source group, 15 which was a wholesale purchasing group, and HEB. 16 Q. I'm sorry? 17 A. HEB. 18 Q. What's that? 19 A. That is a grocery chain in Texas. 20 Q. And when you say Opti-Source is a 21 wholesale purchasing group, for what type of 22 entity?</p>	<p>1 THE WITNESS: That -- there was not a policy. 2 The practice, as I believe I outlined earlier, was 3 product by product based on the competitive 4 situation in the marketplace. 5 Q. (By Mr. Mullin) And when you say "the 6 competitive situation in the marketplace," that 7 would be the -- the WAC prices of -- of other 8 competing generic pharmaceutical manufacturers? 9 MR. ESCOBAR: Objection to the form. 10 THE WITNESS: That would be any pricing 11 information that was available from competing 12 products, be it WAC or any other price point. 13 Q. (By Mr. Mullin) And would -- would -- 14 contract prices for competing manufacturers, are 15 you saying that that would influence Mylan's 16 establishment of its WAC? 17 A. Yes. 18 Q. And -- and how would that work; how would 19 the contract price of a competing manufacturer 20 influence Mylan's WAC? 21 MR. ESCOBAR: Objection to the form. 22 THE WITNESS: The -- the WAC and contract</p>

24 (Pages 90 to 93)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 94	Page 96
<p>1 prices are -- are all related, in that there are</p> <p>2 specific customer discounts that apply to WAC. So</p> <p>3 they all tie in as far as the understanding of</p> <p>4 discounts that apply to what price points and the</p> <p>5 economic or the financial impact of those different</p> <p>6 prices as they -- as they interrelate on the sale</p> <p>7 of a product.</p> <p>8 Q. (By Mr. Mullin) In addition to -- well,</p> <p>9 let -- let me back up.</p> <p>10 You -- you -- I think you said WAC was the</p> <p>11 invoice price of Mylan to wholesalers. Is that</p> <p>12 right?</p> <p>13 MR. ESCOBAR: Objection to the form; asked and</p> <p>14 answered and mischaracterizes the testimony.</p> <p>15 THE WITNESS: WAC is the invoice price and the</p> <p>16 price that wholesalers and distributors pay for the</p> <p>17 product.</p> <p>18 Q. (By Mr. Mullin) Is it true that in many</p> <p>19 instances, wholesalers and distributors would</p> <p>20 receive discounts, rebates, or chargebacks with</p> <p>21 regard to product that had been invoiced at WAC?</p> <p>22 MR. ESCOBAR: Objection to the form.</p>	<p>1 Q. And at any given time, would your</p> <p>2 authority with regard to contract prices be in</p> <p>3 written form?</p> <p>4 A. I don't understand the question.</p> <p>5 Q. Would -- would there be some kind of a</p> <p>6 document that would say that you had authority to</p> <p>7 discount prices to a certain level, but if it was</p> <p>8 going to be greater than that level, it required</p> <p>9 higher level of approval or?</p> <p>10 A. In the pricing and contracts department,</p> <p>11 there were preestablished bid levels that different</p> <p>12 individuals in the department could utilize. And</p> <p>13 yes, any pricing that was recommended outside of</p> <p>14 those bid levels would go through a series of</p> <p>15 escalating approvals.</p> <p>16 Q. And -- and what were the -- the various</p> <p>17 levels of escalating approval?</p> <p>18 A. It varied product by product and customer</p> <p>19 by customer based on the -- the deviation from the</p> <p>20 bid list as well as the annual financial impact of</p> <p>21 the transaction.</p> <p>22 MR. MULLIN: Let me mark this document as</p>
Page 95	Page 97
<p>1 THE WITNESS: Could you please read that back?</p> <p>2 (Whereupon, the record was read by the</p> <p>3 reporter.)</p> <p>4 THE WITNESS: Again, it varies product by</p> <p>5 product and customer by customer. There may be</p> <p>6 discounts associated with that WAC invoice price.</p> <p>7 Q. (By Mr. Mullin) And I understand that</p> <p>8 there may be.</p> <p>9 I'm asking you whether or not it would</p> <p>10 generally be true that the majority of sales made</p> <p>11 at WAC would be subject to some type of a -- a</p> <p>12 discount, a rebate, or a chargeback?</p> <p>13 MR. ESCOBAR: Objection to the form.</p> <p>14 THE WITNESS: I believe that's a different</p> <p>15 question. But to answer, yes, the majority of</p> <p>16 sales to the wholesaler and distributor range would</p> <p>17 have discounts applied to the WAC price.</p> <p>18 Q. (By Mr. Mullin) And did you have price</p> <p>19 authority with regard to establishing contract</p> <p>20 prices with customers?</p> <p>21 A. Yes, that was in the area of my</p> <p>22 responsibility.</p>	<p>1 Exhibit Cunard 001.</p> <p>2 (Whereupon, Exhibit Cunard 001 was marked</p> <p>3 for identification.)</p> <p>4 Q. (By Mr. Mullin) I'm showing you what's</p> <p>5 been marked as Exhibit Cunard 001.</p> <p>6 I'd represent to you that this was produced to</p> <p>7 the Commonwealth by Mylan and it has a Bates number</p> <p>8 that ends in 73007.</p> <p>9 Do you recognize this document?</p> <p>10 A. No, I don't.</p> <p>11 Q. Do you -- you see up in the top right-hand</p> <p>12 corner it says, "Section 4-C, Attachment 11 -- 11,</p> <p>13 bid processing"?</p> <p>14 And it appears to be a form and it appears</p> <p>15 that you could plug in a customer name and it</p> <p>16 appears to have signature lines for various people</p> <p>17 with dollar amounts next to their names.</p> <p>18 Is this -- does this document relate to the</p> <p>19 various escalating levels of approval that you</p> <p>20 referenced?</p> <p>21 MR. ESCOBAR: Objection to the form; no</p> <p>22 foundation.</p>

25 (Pages 94 to 97)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 118	Page 120
<p>1 that back.</p> <p>2 (Whereupon, the record was read by the</p> <p>3 reporter.)</p> <p>4 THE WITNESS: Yes, the pricing was my</p> <p>5 responsibility.</p> <p>6 Q. (By Mr. Mullin) Okay. Including the</p> <p>7 strategy, right?</p> <p>8 MR. ESCOBAR: Objection to the form.</p> <p>9 THE WITNESS: I don't know what pricing</p> <p>10 strategy would be.</p> <p>11 Q. (By Mr. Mullin) You're familiar with the</p> <p>12 word "strategy", aren't you?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. And you're familiar with the word</p> <p>15 "pricing", aren't you?</p> <p>16 A. Yes.</p> <p>17 Q. All right. And don't companies develop</p> <p>18 strategies when they're deciding how to price their</p> <p>19 product?</p> <p>20 MR. ESCOBAR: Objection to the form.</p> <p>21 THE WITNESS: As my understanding would be,</p> <p>22 pricing would be a tactic to lead to a broader</p>	<p>1 statement, I think it's fundamentally flawed in</p> <p>2 that as -- a generic pharmaceutical manufacturer</p> <p>3 cannot control pharmacy profitability.</p> <p>4 Q. You can certainly influence their</p> <p>5 revenues, right?</p> <p>6 MR. ESCOBAR: Objection to the form; no</p> <p>7 foundation.</p> <p>8 THE WITNESS: No.</p> <p>9 Q. (By Mr. Mullin) You can't influence their</p> <p>10 revenues at all?</p> <p>11 MR. ESCOBAR: Objection to the form.</p> <p>12 THE WITNESS: No.</p> <p>13 Q. (By Mr. Mullin) You essentially sell</p> <p>14 pharmaceuticals ultimately for use by pharmacies in</p> <p>15 filling prescriptions, right?</p> <p>16 MR. ESCOBAR: Objection to the form.</p> <p>17 THE WITNESS: Yes.</p> <p>18 Q. (By Mr. Mullin) And that's the essence of</p> <p>19 Mylan's business, isn't it, manufacture and</p> <p>20 distribute pharmaceuticals so prescriptions can be</p> <p>21 filled and people can use them to deal with medical</p> <p>22 conditions, right?</p>
Page 119	Page 121
<p>1 strategy, but I don't see it (sic) pricing strategy</p> <p>2 per se.</p> <p>3 Q. (By Mr. Mullin) In any event, whatever</p> <p>4 the -- the -- the pricing for the product that</p> <p>5 launched in November '99 was one of your</p> <p>6 responsibilities, correct?</p> <p>7 A. Yes.</p> <p>8 Q. This document indicates that with regard</p> <p>9 to this drug, the first point under pricing</p> <p>10 strategy was "maximize reimbursement profitability</p> <p>11 for the pharmacy."</p> <p>12 Do you -- having looked at this document, was</p> <p>13 it ever the policy of the company while you were</p> <p>14 there with regard to establishing its prices to</p> <p>15 maximize reimbursement profitability for the</p> <p>16 pharmacy?</p> <p>17 MR. ESCOBAR: Objection to the form.</p> <p>18 THE WITNESS: No, it was not.</p> <p>19 Q. (By Mr. Mullin) All right. Can you think</p> <p>20 of any reason why this would -- that would be</p> <p>21 recorded in this document?</p> <p>22 A. I don't know. As I look at that</p>	<p>1 A. Yes.</p> <p>2 Q. And you're aware that pharmacies</p> <p>3 frequently are paid by third-party payers for the</p> <p>4 prescriptions that they fill, right?</p> <p>5 A. Yes.</p> <p>6 Q. And you're aware that many third-party</p> <p>7 payers base their reimbursement to the pharmacy for</p> <p>8 a prescription on reported prices?</p> <p>9 MR. ESCOBAR: Objection to the form; no</p> <p>10 foundation.</p> <p>11 THE WITNESS: Please repeat that for me.</p> <p>12 (Whereupon, the record was read by the</p> <p>13 reporter.)</p> <p>14 THE WITNESS: I'm aware that there's different</p> <p>15 methodologies for third-party reimbursement.</p> <p>16 Q. (By Mr. Mullin) And -- and some of them</p> <p>17 are AWP-based, right?</p> <p>18 A. Yes.</p> <p>19 Q. Some of them are WAC-based?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. And essentially, Mylan sets both of</p> <p>22 those, right?</p>

31 (Pages 118 to 121)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 122	Page 124
<p>1 MR. ESCOBAR: Objection to the form and</p> <p>2 misrepresents the evidence.</p> <p>3 THE WITNESS: As indicated previously, we</p> <p>4 develop a proposed AWP that is submitted. And --</p> <p>5 and, yes, we establish a WAC based on a competitive</p> <p>6 scene -- scenario of the market.</p> <p>7 Q. (By Mr. Mullin) And to the extent that</p> <p>8 the AWP's are higher and WACs are higher, the</p> <p>9 reimbursement to the pharmacy is going to be</p> <p>10 higher, isn't it?</p> <p>11 MR. ESCOBAR: Objection to the form.</p> <p>12 THE WITNESS: I don't know.</p> <p>13 Q. (By Mr. Mullin) Can you think of any way</p> <p>14 that having a higher AWP would not result in a</p> <p>15 higher reimbursement to a pharmacy for every</p> <p>16 third-party payer who's AWP-based?</p> <p>17 MR. ESCOBAR: Objection to the form.</p> <p>18 THE WITNESS: Well, there's many other points</p> <p>19 that are used in reimbursements, such as MAC and</p> <p>20 other elements as well. So yes, I could see cases</p> <p>21 where an AWP is not relevant in the reimbursement.</p> <p>22 Q. (By Mr. Mullin) All right. Sometimes</p>	<p>1 terminology. But yes, states can set their own MAC</p> <p>2 or -- or some kind of maximum cost.</p> <p>3 Q. And with regard to federal upper limits</p> <p>4 and for the period of time that you were at Mylan</p> <p>5 or at least up through September of 2003, the</p> <p>6 federal upper limit was set at 150 percent of the</p> <p>7 lowest reported price as long as there were at</p> <p>8 least three reported prices for a generic product?</p> <p>9 MR. ESCOBAR: Objection to the form.</p> <p>10 THE WITNESS: I'm not aware of the exact</p> <p>11 methodology per se on those.</p> <p>12 Q. (By Mr. Mullin) Are -- are you aware that</p> <p>13 the upper limit prices were -- were based on</p> <p>14 looking at what the reported prices were and then</p> <p>15 applying a percentage mark-up to whatever the</p> <p>16 lowest reported price was for the therapeutic</p> <p>17 equivalents?</p> <p>18 MR. ESCOBAR: Objection to the form and no</p> <p>19 foundation.</p> <p>20 THE WITNESS: No, I was not.</p> <p>21 Q. (By Mr. Mullin) You -- I think you said</p> <p>22 you were aware that some third-party payers based</p>
Page 123	Page 125
<p>1 even with a higher AWP, it won't result in a higher</p> <p>2 price because of MACs or FULs or other caps on</p> <p>3 reimbursement, right?</p> <p>4 A. Yes.</p> <p>5 Q. But to the extent that a drug wasn't</p> <p>6 subject to a MAC or a FUL, it would -- if -- if</p> <p>7 it's pure AWP-based reimbursement, the higher the</p> <p>8 reimbursement, it always results in a -- the higher</p> <p>9 the AWP, it always results in a higher</p> <p>10 reimbursement to the pharmacy?</p> <p>11 MR. ESCOBAR: Objection to the form; calls for</p> <p>12 speculation.</p> <p>13 THE WITNESS: I believe the mathematics would</p> <p>14 be true. If the reimbursement methodology didn't</p> <p>15 change, a higher AWP would reflect a higher</p> <p>16 reimbursement.</p> <p>17 Q. (By Mr. Mullin) And with regard to --</p> <p>18 FULs are federal upper limits, right?</p> <p>19 A. Yes.</p> <p>20 Q. And sometimes there's a state upper limit</p> <p>21 as well?</p> <p>22 A. I'm not aware of that -- that specific</p>	<p>1 their reimbursement on the WAC price; is that</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. And -- and Mylan would set the WAC?</p> <p>5 MR. ESCOBAR: Objection to the form.</p> <p>6 THE WITNESS: There was a WAC established for</p> <p>7 every product launch and -- and maintained moving</p> <p>8 forward.</p> <p>9 Q. (By Mr. Mullin) In connection with that</p> <p>10 launch, Mylan would report that price to First</p> <p>11 DataBank and Medi-Span, right?</p> <p>12 A. Yes, as part of requirements for having</p> <p>13 the product listed.</p> <p>14 Q. And the higher you set the -- the WAC, the</p> <p>15 higher the reimbursement, right?</p> <p>16 MR. ESCOBAR: Objection to the form.</p> <p>17 Q. (By Mr. Mullin) For those third-party</p> <p>18 payers that used WAC as the basis for their</p> <p>19 reimbursement?</p> <p>20 MR. ESCOBAR: Same objection.</p> <p>21 THE WITNESS: As discussed with AWP,</p> <p>22 mathematically the same methodology applied to a</p>

32 (Pages 122 to 125)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 126	Page 128
<p>1 higher price would yield a higher reimbursement.</p> <p>2 Q. (By Mr. Mullin) So that a pharmacy can --</p> <p>3 I mean a manufacturer can influence the revenue</p> <p>4 that the pharmacy receives in connection with the</p> <p>5 -- filling a prescription with Mylan's products --</p> <p>6 MR. ESCOBAR: Objection --</p> <p>7 Q. (By Mr. Mullin) -- correct?</p> <p>8 MR. ESCOBAR: -- objection to the form; no</p> <p>9 foundation.</p> <p>10 THE WITNESS: No, because the other variables</p> <p>11 don't control. There's many variables that would</p> <p>12 go into a reimbursement methodology. You don't</p> <p>13 control them.</p> <p>14 Q. (By Mr. Mullin) Like what?</p> <p>15 A. Like the percentage discount. Like a MAC.</p> <p>16 Like an FUL. Or the implementation or application</p> <p>17 of any of those.</p> <p>18 Q. Well -- okay. That -- whatever the</p> <p>19 percentage discount is, if you increase the WAC, as</p> <p>20 long as you're applying the same percentage as a</p> <p>21 matter of mathematics, the -- the resulting</p> <p>22 number's always going to be higher if you start</p>	<p>1 question, please.</p> <p>2 (Whereupon, the record was read by the</p> <p>3 reporter.)</p> <p>4 THE WITNESS: No.</p> <p>5 Q. (By Mr. Mullin) No recollection</p> <p>6 whatsoever on that topic?</p> <p>7 MR. ESCOBAR: Objection to the form; asked and</p> <p>8 answered.</p> <p>9 Q. (By Mr. Mullin) Is that right?</p> <p>10 A. Yes, that is correct.</p> <p>11 Q. Okay. Any recollection of discussion of</p> <p>12 spreads?</p> <p>13 MR. ESCOBAR: Objection to the form. What do</p> <p>14 you mean by spreads?</p> <p>15 MR. MULLIN: Spreads between the contract</p> <p>16 price and the AWP price.</p> <p>17 MR. ESCOBAR: Objection to the form.</p> <p>18 Q. (By Mr. Mullin) Do you recall any</p> <p>19 discussion, conversation, that ever coming up at</p> <p>20 Mylan while you were working there?</p> <p>21 MR. ESCOBAR: Objection to the form.</p> <p>22 THE WITNESS: No.</p>
Page 127	Page 129
<p>1 with a higher WAC, right?</p> <p>2 MR. ESCOBAR: Objection to the form. And</p> <p>3 you're calling now for speculation about what are a</p> <p>4 myriad of different programs.</p> <p>5 THE WITNESS: As answered previously,</p> <p>6 mathematically, yes, it -- it's very simple.</p> <p>7 Q. (By Mr. Mullin) Do you recall</p> <p>8 discussions, conversations at Mylan with regard to</p> <p>9 establishing reported prices, AWP's and WAC's, about</p> <p>10 being concerned at maximizing revenue for</p> <p>11 pharmacies?</p> <p>12 MR. ESCOBAR: Objection to the form.</p> <p>13 THE WITNESS: No.</p> <p>14 Q. (By Mr. Mullin) Do you recall any</p> <p>15 discussion of that at any time while you were at</p> <p>16 Mylan?</p> <p>17 MR. ESCOBAR: Objection to the form.</p> <p>18 THE WITNESS: Could you rephrase that, please.</p> <p>19 MR. MULLIN: Could you read it back.</p> <p>20 (Whereupon, the record was read by the</p> <p>21 reporter.)</p> <p>22 THE WITNESS: Would you repeat the previous</p>	<p>1 Q. (By Mr. Mullin) Did people ever send you</p> <p>2 e-mails saying that customers were reporting that</p> <p>3 someone else had a better spread and, therefore,</p> <p>4 they were less willing or maybe even unwilling to</p> <p>5 buy Mylan's product?</p> <p>6 MR. ESCOBAR: Objection to the form.</p> <p>7 THE WITNESS: Not that I recall.</p> <p>8 Q. (By Mr. Mullin) Do you know Jodi</p> <p>9 Eichelberger?</p> <p>10 A. Yes.</p> <p>11 Q. Who's Jodi Eichelberger?</p> <p>12 A. Jodi Eichelberger was an employee of UDL,</p> <p>13 which is an institutional -- or was an</p> <p>14 institutional division of Mylan.</p> <p>15 Q. When you say "an institutional division,"</p> <p>16 what do you mean?</p> <p>17 A. The company focused on hospital and</p> <p>18 long-term care customer -- pharmacy customers.</p> <p>19 Q. Selling pharmaceuticals in blister packs</p> <p>20 for individual doses?</p> <p>21 A. Yes.</p> <p>22 Q. And was that Jodi's position in or about</p>

33 (Pages 126 to 129)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 210	Page 212
<p>1 THE WITNESS: They complement each other but</p> <p>2 are distinct.</p> <p>3 Q. (By Mr. Mullin) And at Mylan, didn't you</p> <p>4 work closely with the sales people?</p> <p>5 MR. ESCOBAR: Objection to the form.</p> <p>6 THE WITNESS: No, not on a regular basis.</p> <p>7 Q. (By Mr. Mullin) And do you have any</p> <p>8 opinion as to whether or not a -- a template that</p> <p>9 calculated the reimbursement of Mylan's product as</p> <p>10 compared to a brand product and other generics</p> <p>11 would be a valuable or not a valuable selling tool?</p> <p>12 MR. ESCOBAR: Objection to the form. Calls</p> <p>13 for speculation and no foundation.</p> <p>14 THE WITNESS: No, I don't have an opinion.</p> <p>15 Q. (By Mr. Mullin) And you don't have any</p> <p>16 memory of people at Mylan having this; is that</p> <p>17 right?</p> <p>18 MR. ESCOBAR: Objection to the form.</p> <p>19 THE WITNESS: That's correct. I don't recall</p> <p>20 this.</p> <p>21 Q. (By Mr. Mullin) Let me -- did you ever --</p> <p>22 do you know someone at Mylan by the name of R.</p>	<p>1 day-to-day basis?</p> <p>2 A. Not on a day-to-day basis, no.</p> <p>3 Q. Would you think -- would you say it would</p> <p>4 be unusual or an exception to be dealing directly</p> <p>5 with Mr. Moldin when you were at Mylan?</p> <p>6 A. He was there a limited amount of time. I</p> <p>7 couldn't say it would be unusual or exceptional,</p> <p>8 but I did not have daily communication with Mr.</p> <p>9 Moldin.</p> <p>10 Q. Do you have a recollection of sending him</p> <p>11 any templates or spreadsheets that would allow him</p> <p>12 to compare reimbursement on Mylan's drugs versus</p> <p>13 various other drugs?</p> <p>14 A. Not that I recall, no.</p> <p>15 Q. Any new tools that the company had that it</p> <p>16 was distributing to its sales force and you wanted</p> <p>17 to let him know what was going on; anything like</p> <p>18 that ring any bells with you?</p> <p>19 A. No, not that I recall.</p> <p>20 MR. MULLIN: Let's -- I'll have our next</p> <p>21 number. Let's mark this as Exhibit Cunard 012.</p> <p>22 (Whereupon, Exhibit Cunard 012 was marked</p>
Page 211	Page 213
<p>1 Moldin, M-o-l-d-i-n?</p> <p>2 A. Yes.</p> <p>3 Q. Who is that?</p> <p>4 A. For a period of time, Richard Moldin was</p> <p>5 the president of Mylan Laboratories.</p> <p>6 Q. So that would be the president of the</p> <p>7 parent company of Mylan Pharmaceuticals?</p> <p>8 A. That is correct.</p> <p>9 Q. So that would be your boss's boss when you</p> <p>10 were there?</p> <p>11 MR. ESCOBAR: Objection to the form.</p> <p>12 THE WITNESS: I believe the time Mr. Moldin</p> <p>13 was there, I reported to Mr. DeBone who reported to</p> <p>14 Mr. Moldin.</p> <p>15 Q. (By Mr. Mullin) Okay. Do you have any</p> <p>16 recollection of ever sending any templates to Mr.</p> <p>17 Moldin that he could use to compare drugs?</p> <p>18 MR. ESCOBAR: Objection to the form.</p> <p>19 Q. (By Mr. Mullin) The reimbursement of</p> <p>20 drugs?</p> <p>21 A. Not that I recall, no.</p> <p>22 Q. Did you deal with Richard Moldin on a</p>	<p>1 for identification.)</p> <p>2 Q. (By Mr. Mullin) I'd ask you to look at</p> <p>3 what's been marked Exhibit Cunard 012.</p> <p>4 I'd represent to you that this is a document</p> <p>5 that was produced to the Commonwealth by the</p> <p>6 California Attorney General's Office who</p> <p>7 represented to us that it was provided to them by</p> <p>8 Mylan and to a House committee and that the</p> <p>9 redactions that are shown on here were done by</p> <p>10 Mylan.</p> <p>11 And if you look at the very top, it appears to</p> <p>12 be an e-mail from you to R. Moldin, right?</p> <p>13 A. The copy is a little run together, but</p> <p>14 yeah, I believe that's the case.</p> <p>15 Q. And it's dated April 24, 2000, right?</p> <p>16 A. Yes, sir.</p> <p>17 Q. And at that time, you were the director of</p> <p>18 pricing and contracts, right?</p> <p>19 A. That is correct.</p> <p>20 Q. So there was a VP between you and Mr.</p> <p>21 Moldin, right?</p> <p>22 MR. ESCOBAR: Objection to the form.</p>

54 (Pages 210 to 213)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 214	Page 216
<p>1 THE WITNESS: Yes, that is correct.</p> <p>2 Q. (By Mr. Mullin) So he would have been</p> <p>3 three levels above you?</p> <p>4 MR. ESCOBAR: Objection to the form.</p> <p>5 THE WITNESS: I don't know the exact levels.</p> <p>6 But -- but yes, there would have been an additional</p> <p>7 person from what I had outlined earlier.</p> <p>8 Q. (By Mr. Mullin) So it would be fair to</p> <p>9 say he was your boss's boss's boss?</p> <p>10 MR. ESCOBAR: Objection for the form.</p> <p>11 THE WITNESS: Yes, I think that would be</p> <p>12 accurate.</p> <p>13 Q. (By Mr. Mullin) You say, "Dear Mr.</p> <p>14 Moldin, please find attached Drug 7 information per</p> <p>15 your request. The spreadsheets are a little</p> <p>16 complex, but hopefully they will make sense."</p> <p>17 Then you had attached three spreadsheets,</p> <p>18 right; is that what the document shows?</p> <p>19 A. Yes, that's what it appears.</p> <p>20 Q. All right. And one is called price</p> <p>21 comparison and you -- underneath that you say,</p> <p>22 "Outlines current Drug 7 generic and proposed Mylan</p>	<p>1 comparison of one generic to another generic and</p> <p>2 reimbursement -- what the reimbursement was going</p> <p>3 to be on the various products?</p> <p>4 MR. ESCOBAR: Objection to the form.</p> <p>5 THE WITNESS: I don't recall the specific</p> <p>6 reimbursement piece, but I do recall in this</p> <p>7 instant (sic), there was confusion in the</p> <p>8 marketplace as there were two products that were</p> <p>9 both the same molecule extended release but they</p> <p>10 were not interchangeable with one another. And</p> <p>11 there was confusion in the marketplace around the</p> <p>12 pricing dynamics that we were trying to remedy.</p> <p>13 Q. (By Mr. Mullin) And this was with regard</p> <p>14 to the generic versions of Procardia?</p> <p>15 A. Our product was the -- the Mylan product</p> <p>16 was the generic name and equivalent version of</p> <p>17 Procardia XL. There was another product named that</p> <p>18 was nifedipine extended release as well. However,</p> <p>19 it was bioequivalent and interchangeable with the</p> <p>20 brand product Adalat CC. And the fact that the two</p> <p>21 products shared the same molecule name and extended</p> <p>22 release, there was confusion in the marketplace.</p>
Page 215	Page 217
<p>1 prices par -- prior to cash discount and Medicaid."</p> <p>2 Right?</p> <p>3 A. Yes, that's what it says.</p> <p>4 Q. Then the next attachment that you have is</p> <p>5 Mylan versus TEVA versus Drug Roman numeral VII and</p> <p>6 you say, "Outlines the reimbursement model</p> <p>7 comparing Mylan's Drug 7 to TEVA generic and Drug</p> <p>8 Roman numeral VII. Quoted prices are at wholesaling</p> <p>9 chains."</p> <p>10 And then the third attachment is Drug 7</p> <p>11 projections; is that right; that's the title that's</p> <p>12 listed there?</p> <p>13 A. Yes.</p> <p>14 Q. And then you say, "Represents the</p> <p>15 projected Drug 7 conversion rate."</p> <p>16 What's the conversion rate with regard to the</p> <p>17 launch of a pharmaceutical?</p> <p>18 A. The conversion rate is the rate that the</p> <p>19 generic captures the brand market share.</p> <p>20 Q. Okay. And do you have a recollection of</p> <p>21 sending price comparison documents to Mr. Moldin,</p> <p>22 including comparisons that would permit the</p>	<p>1 But they were not interchangeable with one another.</p> <p>2 Q. And who was the manufacturer of Adalat?</p> <p>3 A. Oh. I believe at the time it was Bayer.</p> <p>4 I'm -- I'm not sure who purchased them or where</p> <p>5 that company would be today.</p> <p>6 Q. And do you have a recollection of sending</p> <p>7 Mr. Moldin documents relating to what the</p> <p>8 comparison was on the reimbursement for various</p> <p>9 drugs?</p> <p>10 MR. ESCOBAR: Objection to the form. Are you</p> <p>11 asking if he has a recollection of sending the</p> <p>12 document that you're looking at now?</p> <p>13 MR. MULLIN: Ever, with regard to anything.</p> <p>14 MR. ESCOBAR: Can you just try to rephrase it</p> <p>15 so we -- we have, like, a complete question.</p> <p>16 Q. (By Mr. Mullin) Mr. Cunard, do you have a</p> <p>17 recollection of sending attachments, forms,</p> <p>18 spreadsheets that permitted the comparison of the</p> <p>19 reimbursement on one of Mylan's product versus the</p> <p>20 reimbursement on some competing manufacturers'</p> <p>21 products to Mr. Moldin?</p> <p>22 A. I do not recall that, no. I don't believe</p>

55 (Pages 214 to 217)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 222	Page 224
<p>1 A. Yes, that appears to be the case.</p> <p>2 Q. And you're aware -- you were aware back</p> <p>3 when you were with Mylan that each state has its</p> <p>4 own Medicaid program?</p> <p>5 A. Yes.</p> <p>6 Q. And that each state set its own criteria</p> <p>7 as to the basis on which it was going to reimburse</p> <p>8 under -- for prescription drugs under its Medicaid</p> <p>9 program?</p> <p>10 MR. ESCOBAR: Objection to the form.</p> <p>11 Q. (By Mr. Mullin) Is that right?</p> <p>12 A. I wasn't aware of the -- exactly the --</p> <p>13 the methodology or how that was obtained, but</p> <p>14 through various publications, it was clear that</p> <p>15 there were differences among the programs.</p> <p>16 Q. Okay. If you would, sir, would you turn</p> <p>17 to page 2 of Exhibit Cunard 013 and look at the</p> <p>18 column for the Commonwealth of Massachusetts. I</p> <p>19 think it's the fourth column if you go across</p> <p>20 horizontally.</p> <p>21 Do you see that?</p> <p>22 A. I do.</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. And the -- the net profit or the profit at</p> <p>4 net to the pharmacy is 15.03?</p> <p>5 A. Yes.</p> <p>6 Q. Then it does the same thing for generic</p> <p>7 reimbursement; is that right?</p> <p>8 A. Yes, that appears to be the case.</p> <p>9 Q. And they plug in the generic AWP, the</p> <p>10 124.50?</p> <p>11 A. Yes.</p> <p>12 Q. And for a -- a pharmacy cost, they plug in</p> <p>13 81.30?</p> <p>14 A. Yes, I see that.</p> <p>15 Q. And the profit at net to the pharmacy</p> <p>16 using the generic product is 19.76?</p> <p>17 A. Yes.</p> <p>18 Q. And interpreting this chart or comparison</p> <p>19 worksheet, does it appear to you that the</p> <p>20 conclusion here is that the pharmacy makes more</p> <p>21 money using the generic than the brand product?</p> <p>22 MR. ESCOBAR: Objection to the form.</p>
Page 223	Page 225
<p>1 Q. And under the brand reimbursement</p> <p>2 criteria, do you see in line 3 reimbursement is WAC</p> <p>3 plus and the entry is 10 percent?</p> <p>4 A. Yes.</p> <p>5 Q. And a dispensing fee of \$3?</p> <p>6 A. Yes.</p> <p>7 Q. And a copay of 50 cents?</p> <p>8 A. Yes.</p> <p>9 Q. And then an AWP is plugged in, a WAC price</p> <p>10 is plugged in, and a reimbursement is calculated.</p> <p>11 Do you see that, the 126.83?</p> <p>12 A. Yes.</p> <p>13 Q. Then there's a dispensing fee and a -- a</p> <p>14 copay and it comes up with a total reimbursement of</p> <p>15 130.33.</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. And the cost to the pharmacy, the invoice</p> <p>19 price is 115.30?</p> <p>20 A. Yes.</p> <p>21 Q. And it calculates that the profit to the</p> <p>22 pharmacy at invoice is 15.03.</p>	<p>1 THE WITNESS: Well, as the model outlines,</p> <p>2 19.76 is greater than 15.03, yes.</p> <p>3 Q. (By Mr. Mullin) Do you have a</p> <p>4 recollection of having a document like this at</p> <p>5 Mylan that people used?</p> <p>6 A. I do not, no.</p> <p>7 Q. Is this the document that you sent to Mr.</p> <p>8 Moldin?</p> <p>9 A. No.</p> <p>10 Q. Do you think this would be valuable to a</p> <p>11 salesman?</p> <p>12 A. I don't --</p> <p>13 MR. ESCOBAR: Objection to the form; calls for</p> <p>14 speculation.</p> <p>15 THE WITNESS: I don't know.</p> <p>16 Q. (By Mr. Mullin) You have no idea</p> <p>17 whatsoever whether it would be valuable or not to a</p> <p>18 salesman?</p> <p>19 MR. ESCOBAR: Objection to the form; calls for</p> <p>20 speculation.</p> <p>21 THE WITNESS: No.</p> <p>22 Q. (By Mr. Mullin) Can you think of any</p>

57 (Pages 222 to 225)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 254	Page 256
<p>1 019.</p> <p>2 Q. (By Mr. Mullin) Mr. Cunard, I'm going to</p> <p>3 show you what's been marked as Exhibit Cunard 019.</p> <p>4 It's a series of e-mails. At least the -- the</p> <p>5 one at the very top of the very page is from Mike</p> <p>6 Hatch to you. It appears to attach some</p> <p>7 information relating to Anthem.</p> <p>8 Are you familiar with a customer by the name</p> <p>9 of Anthem?</p> <p>10 A. Yes, I am.</p> <p>11 Q. This document was produced to the</p> <p>12 Commonwealth by California AG's office. They</p> <p>13 represented to us they got it from Mylan, that it</p> <p>14 was also produced to a committee of the Congress.</p> <p>15 It has redactions and we've been told the</p> <p>16 redactions were done by Mylan.</p> <p>17 In going through the document, it all appears</p> <p>18 to relate to the same topic or at least the first</p> <p>19 six or seven pages, although some of the e-mails</p> <p>20 are repeated.</p> <p>21 Why don't I let you look at this just so you</p> <p>22 can become familiar with it. Then I'm going to</p>	<p>1 A. Yes, I have.</p> <p>2 Q. And the -- the customer seems to be</p> <p>3 Anthem?</p> <p>4 A. Yes.</p> <p>5 Q. And what's Anthem?</p> <p>6 A. Anthem is a (sic) insurance program that</p> <p>7 has a mail order pharmacy associated with it.</p> <p>8 Q. And it appears that somebody at Anthem was</p> <p>9 raising a -- a question or an issue about Medicaid</p> <p>10 reimbursement in Ohio for some -- for a drug?</p> <p>11 MR. ESCOBAR: Objection to the form;</p> <p>12 mischaracterizes the document.</p> <p>13 THE WITNESS: I don't see it as raising an</p> <p>14 issue, but just presenting a scenario.</p> <p>15 Q. (By Mr. Mullin) Okay. And turning to</p> <p>16 page 2 of Exhibit Cunard 019, which has a Bates</p> <p>17 number in the lower right-hand corner ending in</p> <p>18 115, there's an e-mail from you to Bob Potter with</p> <p>19 copies to Joe Duda and Bob Claeys.</p> <p>20 And you say, "Bob, Bob, and Joe, something</p> <p>21 doesn't jibe with his reimbursement rates.</p> <p>22 Everything I have on Ohio puts them at AWP minus 11</p>
Page 255	Page 257
<p>1 direct your attention to page 2 to an e-mail from</p> <p>2 you to Bob Potter dated 8/8/01 at 2:33 p.m.</p> <p>3 MR. MULLIN: You can disregard the last four</p> <p>4 pages of Exhibit Cunard 019. I think they're</p> <p>5 documents that we previously looked at.</p> <p>6 Mr. Escobar, if you prefer, I'm going to pull</p> <p>7 the last four pages off of this.</p> <p>8 MR. ESCOBAR: I think that would be the -- a</p> <p>9 better way to go.</p> <p>10 MR. MULLIN: All right. Let's remove the last</p> <p>11 four pages.</p> <p>12 MR. ESCOBAR: Why don't you do this.</p> <p>13 MR. MULLIN: Right now, Exhibit Cunard 019,</p> <p>14 the first page has a Bates number MYLCA-000114 and</p> <p>15 the numbers run continuously to MYLCA-000120.</p> <p>16 There's also a set of Bates numbers on here, MYL</p> <p>17 that end in 88 and run through 94. So there's two</p> <p>18 numbers on each page.</p> <p>19 Q. (By Mr. Mullin) All right. Mr. Cunard,</p> <p>20 have you had a chance to look at this at least a</p> <p>21 little bit and become familiar with what this is</p> <p>22 about?</p>	<p>1 percent for Medicaid or MAC, which this should not</p> <p>2 have being (sic) an exclusive. The 152 price being</p> <p>3 offered is the same spread in comparison to AWP as</p> <p>4 the 15-milligram, which they have purchased 565</p> <p>5 bottles through 7/31. So must be okay. Need more</p> <p>6 info what the issues are. Thanks, Bob." And then I</p> <p>7 guess it has the name Bob Potter under there.</p> <p>8 Did you in the course of performing your</p> <p>9 duties at Mylan make efforts to keep up on what the</p> <p>10 reimbursement rates were for various Medicaid</p> <p>11 programs around the country?</p> <p>12 MR. ESCOBAR: Objection for the form and asked</p> <p>13 and answered.</p> <p>14 THE WITNESS: I did not make an effort to keep</p> <p>15 up on it, but as I indicated earlier, the</p> <p>16 information was published in at least one trade</p> <p>17 journal on somewhat of a regular basis that would</p> <p>18 show Medicaid reimbursements by state.</p> <p>19 Q. (By Mr. Mullin) And what journal was</p> <p>20 that?</p> <p>21 A. I believe it was Drug Topics. I'm not</p> <p>22 sure of the exact.</p>

65 (Pages 254 to 257)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 258	Page 260
<p>1 Q. And is that, like, an annual issue or a 2 quarterly issue or something like that or was it 3 every month or?</p> <p>4 A. Drug Topics was at least monthly and 5 perhaps more frequent. They didn't publish that 6 information monthly, but it was numerous times 7 during the year, I believe.</p> <p>8 Q. And that's something that you had; you 9 maintained Drug Topics and -- and the issues that 10 had the -- the Medicaid information?</p> <p>11 MR. ESCOBAR: Objection to the form.</p> <p>12 THE WITNESS: I didn't really maintain it, but 13 I -- I typically kept the issues of Drug Topics, 14 all the issues.</p> <p>15 Q. (By Mr. Mullin) All right. And was one 16 of your reasons or part of your reasons for doing 17 the fact that from time to time, you would consult 18 with it when issues would arise or questions would 19 arise about Medicaid reimbursements?</p> <p>20 MR. ESCOBAR: Objection to the form.</p> <p>21 THE WITNESS: It was a -- it was a source of 22 reference as issues may arise.</p>	<p>1 ends -- on the first page ends in 2318263 and the 2 next page ends in 64.</p> <p>3 And if you look down at the bottom of the 4 first page, it seems to be an e-mail from Karen 5 Konkus, K-o-n-k-u-s, the manager of pharmaceutical 6 pricing at Omnicare in Covington, Kentucky, and 7 that it was forwarded by Christine McArdle -- 8 McArdle at Mylan.</p> <p>9 Who's Christine McArdle?</p> <p>10 A. Christine McArdle was a clerical person 11 within the pricing and contracts group.</p> <p>12 Q. And are you familiar with Karen Konkus?</p> <p>13 A. I am not, no.</p> <p>14 Q. Are you familiar with Omnicare?</p> <p>15 A. Yes.</p> <p>16 Q. What's Omnicare?</p> <p>17 A. Omnicare is an operator of long-term care 18 pharmacies for nursing homes.</p> <p>19 Q. And was Omnicare a customer?</p> <p>20 A. Yes.</p> <p>21 Q. Significant one?</p> <p>22 MR. ESCOBAR: Objection for the form.</p>
Page 259	Page 261
<p>1 Q. (By Mr. Mullin) And were you aware of 2 others at Mylan who also kept copies of Drug 3 Topics?</p> <p>4 A. I'm not aware. They may or may not have.</p> <p>5 Q. Was there some kind of a library within 6 sales and marketing?</p> <p>7 A. No.</p> <p>8 Q. How about the -- the marketing people; did 9 they maintain some kind of a bookcase or collection 10 of industry publications?</p> <p>11 A. There were some publications. They were 12 mainly to maintain copies of our advertisement that 13 ran in those journals.</p> <p>14 MR. MULLIN: Let me mark this document as -- 15 Exhibit Cunard 020 is our next one.</p> <p>16 (Whereupon, Exhibit Cunard 020 was marked 17 for identification.)</p> <p>18 Q. (By Mr. Mullin) I'm showing you what's 19 been marked Exhibit Cunard 020.</p> <p>20 I'd represent to you that it's a document that 21 was produced to the Commonwealth by Mylan in 22 response to a document request. The Bates number</p>	<p>1 THE WITNESS: I don't recall.</p> <p>2 Q. (By Mr. Mullin) Well, Ms. Konkus writes, 3 "As Omnicare continues to monitor closely the 4 Medicaid changes with HCFA and FULs within our 5 states of operation, we need your help. Dave 6 Kramer -- Kramer director of Medicaid relations 7 will be contacting you shortly to set up a 8 procedure to receive ongoing electronic updates for 9 WACs and AWP's. Dave's phone number here at the 10 corporate office is" -- and then there's a phone 11 number -- "and his e-mail address is" -- and 12 there's an e-mail address. "Thanks in advance for 13 your help on this matter."</p> <p>14 Christine forwarded this e-mail to you; is 15 that right?</p> <p>16 A. Yes, it appears to be the case.</p> <p>17 Q. And Christine said to you, "I got this 18 message from Karen Konkus at Omnicare Heartland. 19 Should I forward this -- who should I forward this 20 to?"</p> <p>21 Right?</p> <p>22 A. Yes.</p>

66 (Pages 258 to 261)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 262	Page 264
<p>1 Q. And you forward it to Joe Duda, right?</p> <p>2 A. Yes.</p> <p>3 Q. And you told him basically, "Please</p> <p>4 contact Mr. Kramer. We can do this. However, need</p> <p>5 to discuss what format and how they would like to</p> <p>6 receive it. We can send via e-mail or perhaps via</p> <p>7 conventional EDI depending upon their capabilities.</p> <p>8 Let's discuss."</p> <p>9 Medicaid reimbursement is a huge issue for</p> <p>10 nursing homes and long-term pharmacies -- long-term</p> <p>11 care pharmacies?</p> <p>12 MR. ESCOBAR: Objection to the form. Calls</p> <p>13 for speculation; no foundation; and also seems to</p> <p>14 be completely unrelated to this document. I'm not</p> <p>15 sure what you -- before you ask the question.</p> <p>16 THE WITNESS: I don't know what the relative</p> <p>17 importance of Medicaid is to those facilities.</p> <p>18 Q. (By Mr. Mullin) Okay. At least this</p> <p>19 company Omnicare claimed Ms. Konkus has a director</p> <p>20 of Medicaid relations, Mr. Kramer.</p> <p>21 In -- in agreeing to have Mr. Duda contact</p> <p>22 them and work this out, was part of your reasoning</p>	<p>1 wanted that information?</p> <p>2 MR. ESCOBAR: Objection for the form. And</p> <p>3 you're asking him to speculate about a third</p> <p>4 party's actions.</p> <p>5 THE WITNESS: No. And as I indicated, I had</p> <p>6 no issue on providing that as that -- it was not in</p> <p>7 conflict with any of our business interests.</p> <p>8 Q. (By Mr. Mullin) David Workman, did he</p> <p>9 report to you for a period of time?</p> <p>10 A. Yes.</p> <p>11 Q. And what was Mr. Workman's position at the</p> <p>12 company when he reported to you?</p> <p>13 A. As I recall, when I joined the company,</p> <p>14 Mr. Workman was also a coordinator within the</p> <p>15 pricing area responsible for direct customer</p> <p>16 pricing. He was later brought back to the pricing</p> <p>17 area again and as a -- and I believe the title was</p> <p>18 director.</p> <p>19 Q. For contracts --</p> <p>20 A. He was --</p> <p>21 Q. -- contract pricing?</p> <p>22 A. In the pricing and contracts area, yes.</p>
Page 263	Page 265
<p>1 that the customer wanted this information because</p> <p>2 of the impact that your WACs and your AWP's can have</p> <p>3 in their reimbursement from the Medicaid programs?</p> <p>4 MR. ESCOBAR: Objection to the form. Calls</p> <p>5 for speculation as to the third party, the</p> <p>6 customer, and mischaracterizes the document on</p> <p>7 which your question was apparently based.</p> <p>8 THE WITNESS: I asked Mr. Duda to contact the</p> <p>9 customer to facilitate making this happen just</p> <p>10 because it was a customer and they had requested</p> <p>11 information that we could relatively easily</p> <p>12 provide. As to what their use for that information</p> <p>13 was, it was insignificant to me.</p> <p>14 Q. (By Mr. Mullin) It's always good to know</p> <p>15 why customers want things?</p> <p>16 MR. ESCOBAR: Objection to the form.</p> <p>17 THE WITNESS: Not necessarily, no.</p> <p>18 Q. (By Mr. Mullin) It's usually good to know</p> <p>19 why customers wants things?</p> <p>20 MR. ESCOBAR: Objection to the form.</p> <p>21 THE WITNESS: Not necessarily, no.</p> <p>22 Q. (By Mr. Mullin) You got any idea why they</p>	<p>1 Q. And over the course of time that you</p> <p>2 worked at Mylan, you got to know Mr. Workman?</p> <p>3 A. Yes. And I knew Mr. Workman before</p> <p>4 joining Mylan.</p> <p>5 Q. And how did you know him?</p> <p>6 A. As a customer of Mylan, I had met him on</p> <p>7 several occasions.</p> <p>8 Q. You -- that's when you were with Rite Aid?</p> <p>9 A. Rite Aid and Value Drug.</p> <p>10 Q. And he'd come out on sales calls?</p> <p>11 A. No. No.</p> <p>12 Q. You just talked to him over the phone</p> <p>13 about your account?</p> <p>14 A. No. I was invited on several occasions</p> <p>15 for plant visits and to tour the Mylan facilities</p> <p>16 in Morgantown. During those visits, I met Mr.</p> <p>17 Workman.</p> <p>18 Q. And are you aware of Mr. Workman doing a</p> <p>19 study while you were at Mylan maybe in connection</p> <p>20 with a college course he was taking about</p> <p>21 establishing a training program at Mylan for a --</p> <p>22 internal training within sales and marketing</p>

67 (Pages 262 to 265)

Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 270	Page 272
<p>1 delivers inadequate service to Mylan's customers.  2 Examples of the problems were as follows." And the  3 first bullet point is, "Lack of knowledge of  4 pharmacy reimbursement scenarios from Mylan  5 products."  6 Did you find that to be the case?  7 MR. ESCOBAR: Objection to the form. And  8 you're asking him to -- I'm not sure what you're  9 asking him.  10 MR. MULLIN: I'm asking whether or not he  11 found that to be the case.  12 MR. ESCOBAR: Did -- did he find what to be  13 the case?  14 MR. MULLIN: That individuals within the sales  15 and marketing department at Mylan lacked knowledge  16 of pharmacy reimbursement scenarios for Mylan  17 products.  18 MR. ESCOBAR: Objection to the form.  19 THE WITNESS: I don't recall ever doing any  20 kind of evaluation to determine their understanding  21 of pharmacy reimbursement, so I -- I -- I can't say  22 I had any opinion on the topic.</p>	<p>1 A. Yes, that's where the majority of my time  2 was spent.  3 Q. And as a general proposition, was a lot of  4 your activity revolving around negotiating with  5 customers or coming up with pricing that customers  6 -- that you would have with customers on a contract  7 basis?  8 A. Yes.  9 Q. Now, Mr. Mullin asked you questions  10 throughout the day talking about reimbursement,  11 sometimes about Medicaid reimbursement.  12 Did -- to your knowledge, did Mylan receive  13 any money or any reimbursement from Medicaid in  14 connection with Mylan's sales of drugs?  15 A. No.  16 Q. Was it your understanding that the  17 reimbursement that Mr. Mullin mentioned or Medicaid  18 reimbursement was something that was paid by  19 federal and state governments to providers that  20 dispensed the products?  21 A. Yes, that's correct.  22 Q. And Mylan is -- I think you described that</p>
Page 271	Page 273
<p>1 MR. MULLIN: Well, I think that completes our  2 examination of this witness.  3 MR. ESCOBAR: Okay. We'll take a few minutes.  4 I'll have some questions for the witness and then  5 we can dismiss.  6 MR. MULLIN: Okay.  7 THE VIDEOGRAPHER: 4:32. We're off the  8 record.  9 (Whereupon, a recess was taken.)  10 THE VIDEOGRAPHER: 4:40. We're back on the  11 record.  12 EXAMINATION  13 BY MR. ESCOBAR:  14 Q. Good afternoon, Mr. Cunard.  15 I'm ask you -- I'm going to ask you a few  16 questions following up on -- on Mr. Mullin's  17 examination.  18 Just to put it in context, I think you  19 described generally that during the time you were  20 at Mylan from 1999 to 2006, your principal function  21 was in the area of pricing and contracts. Is that  22 right?</p>	<p>1 Mylan is a company that is engaged in the sale of  2 generic pharmaceutical products, right?  3 A. Yes, that's correct.  4 Q. And did Mylan participate in a market that  5 you would view as a competitive one?  6 A. Yes.  7 Q. And what were the general basis (sic) on  8 which you perceived that you competed with other  9 companies with respect to the sale of  10 pharmaceutical products?  11 A. As indicated earlier, price, supply,  12 value-added services, CE programs --  13 MR. MULLIN: I'm sorry. I couldn't hear you.  14 THE WITNESS: Price, supply, value-added  15 services such as continuing education programs,  16 quality of product, reliability, reputation.  17 Q. (By Mr. Escobar) And generally within --  18 and in your experience during the time that you  19 were at Mylan, was -- were Mylan's products viewed  20 favorably in the market and had the requisite  21 approvals by government agencies?  22 A. Yes.</p>

69 (Pages 270 to 273)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 274	Page 276
<p>1 Q. Now, Mr. Mullin mentioned at the outset 2 that the reason the deposition was being taken is 3 because Massachusetts had sued Mylan and other 4 generic companies in a case that's now pending up 5 in Massachusetts. And one of the allegations 6 that's being made by Massachusetts is that 7 Massachusetts was deceived into thinking that the 8 WAC price of Mylan's product was a price that was 9 net of rebates, chargebacks, discounts, and other 10 deductions. 11 Did -- to your knowledge, did anyone at Mylan 12 ever represent to the State of Massachusetts that 13 Mylan's WAC on its products was net of discounts, 14 chargebacks, rebates, and other -- other 15 deductions? 16 MR. MULLIN: Objection; foundation and 17 misstates the allegations in the complaint. 18 MR. ESCOBAR: You can answer. 19 THE WITNESS: No. I'm not aware any of such 20 representation. 21 Q. (By Mr. Escobar) And the -- Mylan's WAC 22 price, was that an actual invoice price that Mylan</p>	<p>1 A. If a WAC price is increased for wholesale 2 and distributor com- -- customers, they pay their 3 cash discount or their prompt pay discount off of 4 invoice price, which is WAC. They have 5 distribution service fees which are paid off the 6 invoice price, which is WAC. There's often volume 7 incentives which are paid off WAC. So inflating the 8 WAC price would increase the cost of all those 9 programs. Absent a change on the net or the 10 contract price side, those increased costs would be 11 reflected directly in the profitability of Mylan's 12 products. 13 Q. And in the -- in the time that you were at 14 Mylan working in the pricing area, would -- as a 15 general -- as a general proposition, would -- would 16 the company look at WACs to see if they had to be 17 reduced in order to avoid issues along the 18 chargeback issue that you mentioned? 19 MR. ESCOBAR: Objection; leading. 20 MR. ESCOBAR: You can answer. 21 THE WITNESS: Adjustments to WAC that were 22 done proactively would be more around a decrease</p>
Page 275	Page 277
<p>1 charged to its wholesale customers? 2 A. Yes. 3 Q. Did -- the suggestion in the allegations 4 in the complaint that Massachusetts has filed is 5 that Mylan would raise its WACs for the purpose of 6 increasing reimbursement. 7 In your experience dealing with the pricing 8 area and with WACs in particular, are there 9 negative consequences to Mylan if it just raises 10 its WACs for purposes of reimbursement? 11 A. Yes. As typically in the generic market, 12 over time you see price erosion as competition 13 continues and customers go through bid cycles, so 14 the -- the net price continues to erode. An 15 increase of WAC where there's specific discounts 16 tied to it around the wholesale programs would 17 actually be counter-productive to the profitability 18 of Mylan. 19 Q. And can you explain to the jury how it 20 would be that if you increase WACs while the prices 21 erode, as you put it, due to competition, how that 22 could have a negative consequence?</p>	<p>1 because that would decrease our costs to the 2 customer base and increase our profitability if we 3 were able to achieve that. 4 Q. (By Mr. Escobar) Now, Massachusetts has 5 provided in the course of this litigation some 6 damage calculations where they argue that they 7 should have been paying -- reimbursed. And -- and 8 their allegation is that they were reimbursing on 9 the basis of WAC for three specific drugs, 10 clozapine, lorazepam, and phenytoin, and that they 11 were reimbursing on the basis of WAC which they 12 allege was false, and that they really should have 13 been paying on something much lower and are using 14 an AMP calculation to indicate what they believe 15 they should have been paying. 16 Are you familiar with the term "AMP"? 17 A. Yes, I am. 18 MR. MULLIN: Objection to the question in that 19 it misstates the allegations in the complaint and 20 the damage calculation. 21 MR. ESCOBAR: Are you not calculating some 22 damages on the basis of some AMP number?</p>

70 (Pages 274 to 277)



Cunard, Robert G.

October 26, 2007

Atlanta, GA

Page 278	Page 280
<p>1 MR. MULLIN: We're calculating on the basis of</p> <p>2 that. We're not saying that reimbursement should</p> <p>3 have been based on that.</p> <p>4 MR. ESCOBAR: But your -- your -- you are --</p> <p>5 your calculations that you've given us are based</p> <p>6 AMP, correct?</p> <p>7 MR. MULLIN: That they're -- they're -- that's</p> <p>8 the closest number we can find to the real WAC.</p> <p>9 Q. (By Mr. Escobar) Okay. So at the moment,</p> <p>10 Massachusetts is suggesting that this real WAC</p> <p>11 should have been AMP.</p> <p>12 So let me ask you, are you familiar with the</p> <p>13 term "AMP"?</p> <p>14 A. I am.</p> <p>15 Q. And what do those letters stand for as you</p> <p>16 understand it?</p> <p>17 A. Average manufacturer price.</p> <p>18 Q. And is that a -- tell us what average</p> <p>19 manufacturer price is and what Mylan does with</p> <p>20 that.</p> <p>21 A. As I understand it, that is the -- a</p> <p>22 calculation done for a given period of time</p>	<p>1 A. Yes.</p> <p>2 Q. Mr. Mullin showed you some spreadsheets</p> <p>3 and talked to you about spread and used that word</p> <p>4 on -- several times during the course of your</p> <p>5 testimony and pointed you to some documents.</p> <p>6 Based on the reporting of AMP, is it your</p> <p>7 understanding that people that run the Medicaid</p> <p>8 program had information from Mylan from which they</p> <p>9 could compare the AMP for a drug and the WAC or the</p> <p>10 AWP number?</p> <p>11 MR. MULLIN: Objection; foundation.</p> <p>12 THE WITNESS: Yes. It's my understanding that</p> <p>13 that information is available from CMS if</p> <p>14 requested.</p> <p>15 Q. (By Mr. Escobar) So as far as you know,</p> <p>16 during the time that you were working at Mylan, the</p> <p>17 -- the government agency that ran Medicaid could</p> <p>18 look at both Mylan's AWP and WAC and compare it to</p> <p>19 an AMP number; is that right?</p> <p>20 MR. MULLIN: Objection; foundation.</p> <p>21 Q. (By Mr. Escobar) Is that right?</p> <p>22 A. Yes, that is correct.</p>
Page 279	Page 281
<p>1 representing net sales and corresponding units for</p> <p>2 non-government business. It's a straight division</p> <p>3 that comes up with an average price per dose as is</p> <p>4 typically done, either tablet or capsule.</p> <p>5 Currently, that's reported on a quarterly basis to</p> <p>6 CMS.</p> <p>7 Q. And CMS is a federal agency that oversees</p> <p>8 the Medicaid program?</p> <p>9 A. Yes.</p> <p>10 Q. And is it your understanding that Mylan</p> <p>11 reports AMPs in accordance with instructions for</p> <p>12 calculating those AMPs that are provided by the</p> <p>13 federal government?</p> <p>14 A. Yes.</p> <p>15 Q. Now, is it your understanding that the</p> <p>16 reporting of AMP happens on a quarterly basis every</p> <p>17 year?</p> <p>18 A. Yes, that is correct.</p> <p>19 Q. So based on -- during the time that you</p> <p>20 were at Mylan, was it your understanding that the</p> <p>21 CMS agency which oversees the Medicaid program was</p> <p>22 receiving AMP information on Mylan's drugs?</p>	<p>1 Q. Okay. Now, Mr. Mullin asked you and</p> <p>2 showed you documents about various customers,</p> <p>3 wholesalers, and other types of Mylan customers.</p> <p>4 Was the federal government a customer of</p> <p>5 Mylan's?</p> <p>6 A. Yes.</p> <p>7 Q. And what -- what kind of a customer were</p> <p>8 they in terms of the terminology that you use to</p> <p>9 describe customers?</p> <p>10 A. They were a contract customer in that they</p> <p>11 did not buy product directly from us, but sourced</p> <p>12 it under a contract through the wholesale</p> <p>13 distribution network.</p> <p>14 Q. And the contract that the federal</p> <p>15 government -- that was used in selling to the</p> <p>16 federal government, did that have a name?</p> <p>17 A. Yes. There's actually -- actually two</p> <p>18 that I was aware of. One was the Veterans</p> <p>19 Administration contract and the second one is the</p> <p>20 Federal Supply Schedule more commonly known as FSS.</p> <p>21 Q. And what was your familiarity with FSS?</p> <p>22 A. FSS is just a -- a contract that pricing</p>

71 (Pages 278 to 281)